

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MARKUS GARNICA,

Defendant and Appellant.

H028819

(Monterey County  
Super. Ct. No. SS033200)

**STATEMENT OF THE CASE**

A jury convicted defendant Markus Garnica of robbery and two counts of assault with a deadly weapon, one with beer bottles and the other with a knife, and found true allegations that he used a deadly weapon and personally inflicted great bodily injury. (Pen. Code, §§ 211, 245, subd. (a)(1), 12022.7, subd. (a), and 12022, subd. (b).)<sup>1</sup> The court imposed a nine-year sentence to be served at the California Youth Authority. The sentence comprised a three-year term for the robbery with a three-year enhancement for inflicting great bodily injury and a one-year enhancement for using a deadly weapon; and

---

<sup>1</sup> Defendant was charged and tried along with codefendant Edgar Navarro. The jury acquitted defendant of attempted murder and street terrorism and found gang allegations not true.

All further statutory references are to the Penal Code unless otherwise specified.

two one-year consecutive terms for each assault. The court stayed a second enhancement for bodily injury under section 654.

On appeal from the judgment, defendant claims the court erred in failing to stay the punishment for one count of assault under section 654.

We affirm the judgment.

### **FACTS**

Sometime after midnight on May 24, 2003, Ivanuel Gonzalez was walking to his car after work, when Navarro and defendant approached him quickly. Navarro put a knife to his Gonzalez's throat, cutting him, and defendant stood behind him. Navarro demanded money, and Gonzalez gave him around \$30. Navarro demanded his wallet. As Gonzalez tried to take it from his pocket, defendant broke two beer bottles over his head. Defendant and Navarro then started beating him, and he ended up on the ground, where the assault continued. Gonzalez momentarily freed himself and moved away, but they pursued and caught him. They resumed beating and kicking him, and at one point, Navarro stabbed him in the hand. Gonzalez again broke free and moved away, but they chased and caught him and continued the beating and kicking. Finally, when Gonzalez managed to get up, they left.

Javier Tortoledo was in his house and heard a fight outside. He saw a man standing and hitting someone on the ground. Another man was down closer to the victim. He heard one ask, "Where's your money," and then the other person said, "I have his wallet." At that point, Tortoledo went to get his cell phone. When he returned, he saw the victim walking in one direction and the assailants walking the other way.

Tortoledo went out to the victim, and another person called the police. He noticed the house where the assailants had gone, and when the police arrived, Tortoledo led them there.. Police found the two assailants inside the house. Both Tortoledo and Gonzalez identified defendant.

## MULTIPLE PUNISHMENT

Defendant contends that section 654 bars separate punishment for both of his assault convictions.<sup>2</sup> He asserts that his act of hitting Gonzalez with the beer bottles led to two convictions, one based on the hitting, and the other based on Navarro's "simultaneous" conduct in stabbing Gonzalez in the hand. He argues that the assaults "being simultaneous, were incident to one objective: to beat up Gonzales [*sic*]. The assaults cannot be viewed as incidental to the robbery, as there as no reason to resort to such violence to accomplish the robbery."

Section 654 is intended "to ensure that a defendant's punishment is commensurate with his [or her] culpability." (*People v. Perez* (1979) 23 Cal.3d 545, 552.) The statute bars multiple punishment for both a single act that violates more than one criminal statute and multiple acts, where those acts comprise an indivisible course of conduct incident to a single criminal objective and intent. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208; *People v. Bauer* (1969) 1 Cal.3d 368, 376; *In re Ward* (1966) 64 Cal.2d 672, 675-676; *Neal v. State of California* (1960) 55 Cal.2d 11, 19.) Conversely, where a defendant commits multiple criminal offenses during a single course of conduct, he or she may be separately punished for each offense that he or she committed pursuant to a separate intent and objective. (*People v. Beamon* (1973) 8 Cal.3d 625, 637-639.)

Whether a single course of conduct is divisible into different offenses based on separate objectives and intents is a question of fact for the trial court, and its express or implicit findings will be upheld on appeal when they are supported by substantial evidence. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) In this regard, we review the trial court's determination in the light most favorable to the respondent and

---

<sup>2</sup> Section 654 provides, in relevant part, "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

presume the existence of every fact the trial court could reasonably deduce from the evidence. (*Ibid.*)

Here, the trial court implicitly found that defendant harbored separate and independent objectives and intents in personally hitting Gonzalez with the beer bottles and aiding and abetting Navarro in stabbing him. The record supports the court's finding.

Although the evidence reveals a single, continuous, course of conduct, it refutes defendant's assertion that the two assaults occurred *simultaneously* when he hit Gonzalez with the beer bottles. Gonzalez testified that after he surrendered cash to Navarro, Navarro demanded his wallet, and as he struggled to get his wallet out of his pocket, defendant clubbed him with the beer bottles. Then both assailants started beating him, and he ended up on the ground. Gonzalez further testified that he momentarily freed himself and fled, but his assailants pursued and caught him a short distance away. They resumed beating him, and while defendant beat and kicked Gonzalez, Navarro stabbed him. Thus, contrary to defendant's claim, this is not a case where one volitional act—clubbing with beer bottles—gave rise to multiple offenses. Rather, the second offense occurred after the first.

Under the circumstances, the court reasonably could find that defendant clubbed Gonzalez to further prod and compel his compliance with Navarro's demand for the wallet. Moreover, the court also could find that while Gonzalez was on the ground immediately after being clubbed, Tortoledo heard one of the assailants say that he had Gonzalez's wallet.

In addition, the court reasonably could find that after being clubbed and having his money and wallet taken, Gonzalez momentarily freed himself, tried to escape, but was caught by defendant and Navarro, who then engaged in a gratuitous acts of violence, including the stabbing, which they intended solely to inflict injury and pain. (See, e.g., *People v. Surdi* (1995) 35 Cal.App.4th 685 [multiple stabbings episodes reflected separate intent to do violence apart from kidnapping and mayhem]; *People v. Nguyen*

(1988) 204 Cal.App.3d 181, 191 [separate punishment for “gratuitous violence or other criminal acts far beyond those reasonably necessary to accomplish the original offense”].)

Defendant’s reliance on *People v. Latimer, supra*, 5 Cal.4th 1203 does not convince that section 654 applies here.

In *Latimer*, the defendant and the victim were running errands together. At one point, the defendant drove to a remote area, assaulted and then raped the victim. Afterwards, he drove to a second location and raped her again. After that, he drove to a third location, but, fearing that he would kill her, the victim fled into the desert. (*People v. Latimer, supra*, 5 Cal.4th at p. 1206.) The trial court imposed separate punishments for the kidnapping and the two rapes. However, the appellate court held that section 654 barred separate punishments for the kidnapping and rapes because the kidnapping was carried out solely for the purpose of committing the two rapes. (*Id.* at pp. 1206-1207.) The California Supreme Court agreed, finding no evidence that the defendant had “any intent or objective behind the kidnapping other than to facilitate the rapes.” (*Id.* at p. 1216.)

Here, however, the record supports a finding that defendant assaulted Gonzalez with the beer bottles to facilitate the robbery and later aided and abetted Navarro’s subsequent gratuitous act of stabbing Gonzalez for the purpose of inflicting pain and injury.

**DISPOSITION**

The judgment is affirmed.

---

RUSHING, P.J.

WE CONCUR:

---

PREMO, J.

---

ELIA, J.